

and that he is acting in accordance with the designs of the government.

Mr. Brown.—I wish you to inform him that that is not the question, but he must advise them that they have no right to interrupt me when I am addressing him. Put that as plainly as you can.

Mr. Judd.—The Governor requests me to say that His Majesty has appointed me to assist him and if you treat me with disrespect you disrespect him.

Mr. Brown.—I wish you to tell him I mean no disrespect. Am I to have my rights?

Mr. Judd.—You are not to be interrupted; when I said to the Governor don't interrupt.

Mr. Bogardus.—I tho't you said don't speak.

Mr. Judd repeated the explanation he had given before.

Mr. Brown.—This extraneous matter having been done with, let us go on with the case. According to the decisions I have been told of as being the law of this court, he has a right to put away every foreigner and put only the names of those who have taken the oaths of allegiance to His Majesty. Ask him if that would be according to the intention of the Hawaiian laws? Ask him where would foreigners have their remedy? Their laws say foreigners shall be on the juries. The object of this law was that foreigners should have fair play; that they should have foreigners in their jury who not only knew them, but had interest in them.—That it is considered by all civilized nations when a man takes an oath of allegiance to any sovereign, he becomes a part and parcel of that kingdom. That it is not color which makes a man. I would place as much confidence in one of his (the Governor's) own countrymen as I would in any one who has taken the oath of allegiance. That I have so much confidence in him that I would trust him with a case of mine as quick or quicker than I would some of the naturalized foreigners, picked up from (gutters), the (purlicues of) streets and vessels—some of them! That it is principle which induces me to demand this. That I know of no one on the jury that I would object to in common cases, but it is from principle that I object in this case. Now I wish you to say to the Governor, that in regard to the decision in the other case, I have seen no foundation for any decision that he made. I saw only that so and so was the case, but I saw it founded on no law of this country, of European countries, or of the United States. I want to know upon what grounds that decision was made. If it was made upon his own *ipse dixit*, very well! I wish you to ask him how a man can be in two situations? How can a man be a foreigner and a native or denizen? How can he be two things at once? If that is the case, ask him how it would be if one of those subjects of his Majesty were taken up to be tried, what jury they would be entitled to? They also would be entitled to a jury of foreigners. They owe allegiance to this government; they owe allegiance to the laws of this government; they prepare to be governed by those laws when they take the oath of allegiance; they are entitled to be tried by Hawaiian subjects and not foreigners. When a man takes the oath of allegiance in the United States he is considered in every respect an American citizen. That when a man takes an oath of allegiance to Kamehameha the third, he becomes an Hawaiian subject: his interest, his feelings, every thing makes him Hawaiian. He is bound by his oath to look out for the interests of the King of the Hawaiian Islands against the interest of all the world besides. Now let me presume a case. Here is a man under the law of treason, a man who commits treason against the King of the Sandwich Islands. He is brought up to be tried for that treason according to the law of the Sandwich Islands, and not according to treaties made with Great Britain. That man would be entitled to a jury of half natives and half foreigners, the King being a native and the defendant a foreigner. And how would that man have a fair trial according to the Governor's decision, that the jury shall consist of Hawaiians, how I say could that man have a fair trial? Tell him in the present state of feeling here, as far as we can see by newspapers and other things, I think every American would prefer in a case of treason, or murder, or in any case where his interests were concerned, trusting himself to a whole jury of natives than to have half of them of those foreigners who have taken the oath of allegiance. Now I want nothing but justice. I don't want to interfere with their laws. I want them carried out in spirit and letter. I find every thing I want in the written or rather published law of this land; and unless they are carried out in the full spirit of the laws, I shall protest against him and the Government, holding them responsible for all damages that may accrue to the defendant in this case. I shall not consider that he has had a fair trial. (A pause.)

Ask him whether he decides that Mr. Rhodes shall be sworn? Ask him.

Mr. Judd.—The decision of the case was read because it was asked for; the decision will remain the same after the argument.

Mr. Brown.—That appears to be the understanding, that the decision should be given first, and the argument take place afterwards. I want to know after arguing the case whether the Governor is still of the same opinion as he was before when he declared his decision about the jury?

Mr. Judd.—My decision (he says) is that they are *haoles*, but not aliens; nor are they natives. Gentlemen that have been called on the jury, will you step this way.

Mr. Brown.—I wish you to inform the Governor that I protest against Mr. Godfrey Rhodes being on this jury. And I wish that protest to be entered in the records of this court. I wish it recorded.

Mr. Rhodes.—May I enquire the reasons?

Mr. Brown.—Merely because you have taken the oath of allegiance.

Mr. Rhodes.—There should be no discussion of this kind [with the jurors.]

Mr. Brown.—I wish you to understand it is a question of law, not of feeling. Has Mr. Austin taken the oath of allegiance?

Mr. Austin.—No, I have not.

Mr. Brown.—Has Mr. Rendolls?

Mr. Rendolls.—No, sir.

Mr. Judd.—Have you any further objections to these jurymen?

Mr. Brown.—None other than I know of. Mr. Brown then asked the jurymen severally if they had formed any opinion, and being answered in the negative, said then he had no objections.

Mr. Brown.—I have made the only objections that I wish to make; that to Mr. Rhodes. (The Governor then administered the oath to Godfrey Rhodes, E. H. Boardman, R. W. Wood, George Pelly, Thomas B. Rendolls, and James Austin.)

Mr. Judd called on Mr. J. R. von Pfister, Dr. T. C. B. Rooke, Mr. James Makee, Mr. Daniel P. True, Mr. John Ladd, Mr. L. C. Gray, Mr. William Baker, jun. (Dr. T. C. B. Rooke, not present.)

Mr. Brown.—I object to Mr. von Pfister, as owing allegiance to this Gov't, and being an officer of his Majesty Kamehameha III.

Mr. von Pfister.—May I ask, Mr. Brown if those are the only reasons? Was I one of those picked up in a gutter?

Mr. Judd.—Are you an officer?

Mr. von Pfister.—I am.

Mr. Brown.—Are you not a Sec'y to Dr. Judd?

Mr. von Pfister.—I am.

Mr. Brown.—It appears you are clerk to one of the Judges in this court.

Mr. Judd.—Give me the names, if you please, Mr. Brown, of those against whom you protest?

Mr. Brown.—On account of his being a subject of Hawaii, and of his being a clerk to one of the Judges in this court, I object to Mr. von Pfister.

Mr. von Pfister.—I am not a clerk to any one in this court.

Mr. Brown.—I was not aware before that there were THREE Judges. Mr. Gray, have you taken the oath of allegiance? Mr. Wood? Mr. Ladd? Mr. True? (The gentlemen addressed answered.) I also object to Mr. L. C. Gray, on account of his having taken the oath of allegiance, and not being a foreigner according to the Hawaiian laws. It may become necessary, since I have been asked the question by two very respectable men, Messrs. Rhodes and von Pfister, whether I intended to bring them in, in a remark I made, to explain my meaning. I will relate a single circumstance which led me to make that remark. One of the missionaries informed me that a short time since a person came to be married. He asked him if he had taken the oath of allegiance. He said 'yes, he had been in a vessel and did not want to go out again till next fall, and he took the oath to get a wife.' There is a sample! I don't wish to include Mr. Rhodes and Mr. von Pfister, or any others who have joined the Government with the best motives in the world. But drunken sailors who are known to have joined it, I do consider as coming under the category of those picked up in the streets.

Mr. von Pfister.—I know Mr. Brown has said:—If you want to marry or make money, take the oath.

Mr. Brown.—I deny it. It is an infamous lie! Whoever says so tells an infamous lie! [Here Mr. Judd interrupted.] I have been accused and have a right to complain. There is not a single individual to whom I ever gave the advice but Mr. Thompson. He came to me and I expressed the opinion that it might be to his advantage to take the oath. I said, however, 'you know best.' Other persons have come to me, and I said, 'I have no opinion to give: do as you please. I have nothing to do in one way or the other.' Whoever denies that, expresses an infamous lie! I did advise Mr. Thompson, because I tho't he was silly and infamously treated. (To be Continued.)

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In Mr. Brown's remarks which we publish to day in the case of Gray, we find that the exception he makes to naturalized foreigners sitting upon juries in cases which arise between foreigners is the principal topic. The grounds upon which he makes this exception are not clearly given, for in one part of his speech he remarked, "I think every American would prefer in a case of treason" (how can an alien commit treason against this gov't?) "or murder, or in any case where his interests were concerned trusting himself to a whole jury of natives than to have half of them of those foreigners who have taken the oath of allegiance." And yet immediately after he says, "it is a question of law and not of feeling." Now to our faculties, the imputation cast upon "those foreigners who have taken the oath of allegiance" that they have so far imbibed hatred to their born brethren, that not only their property but lives would be endangered by them, even under the solemn safeguard of a jury trial, indicates a great deal of feeling and very wicked feeling also. These sentiments we trust are confined to Mr. Brown. They are upon a par with the remark he made in regard to every jurymen, viz: that for the purposes of the court, the government to day made them foreigners; they were perfectly safe while they sat in those chairs, but tomorrow if they committed an offence they would be hung up without law or gospel. He further remarked that there were no laws here; every thing was *helter skelter*, the judges put such interpretations upon the statutes as they chose, and that no foreigner was safe under such a system. We leave it to the good sense of the hearers of these sentiments and of our readers, whether by such opinions delivered in the emphatic manner of Mr. Brown, and in permitting his excited feelings to get the better of both truth and reason he acted in the true spirit of official duty.

Again we find him repeating that he would sooner trust a case to a jury of natives and expressing a confidence in obtaining an honest and legal verdict from them, when it would be impossible from a jury of white Hawaiians. We are pleased to find that his opinion of the natives has changed for the better, for in his letter to the Secretary of State of Sept 13th. ult., we find him stating, "there are not enough natives of sufficient knowledge and acquirements to sit upon a jury." This opinion was given in arguing against even a half jury of six; but it now seems that at least twelve may be found capable of giving even to him, an impartial verdict. This is a gratifying acknowledgement from one in his high station, and so little disposed to look favorably upon the efforts of this petty kingdom. But amidst these conflicting opinions we find him strenuously asserting that his sole objections to the men of the class he refers to, is solely one of principle, arising from the wording of the statute on the formation of juries, and not because he considered them in any way less qualified than their former countrymen. This then we shall take to be the point at issue, unless he can demonstrate that the process of naturalization destroys the moral and intellectual identity of a man, and entirely unfits him ever after of judging of questions of which he was before perfectly competent. But it is not to be presumed that either he or any of his followers will succeed in this. At all events, naturalized Hawaiians have as full confidence in the honor and acquirements of their native countrymen now as before, and would scorn to impute to them the least shade of delinquency, because they may not find it expedient to follow their example. Any attempt to influence juridical decisions on the ground of nationality is deserving of the strongest reprobation. It is wholly adverse to the practice and doctrines of the courts of this country, and he

who insinuates a charge implying this is equally as guilty as the judge would be who would connive at the attempt.

"If the accuser and the accused be both foreigners, then the jury shall be made up of foreigners only"—says the statute on which Mr. Brown founds one of his objections. Several points are necessary to be ascertained in order to get at the real meaning of the law.

First,—what is the common signification of "foreigners?" Second,—what is the meaning of the word in the view of the law? And, third,—do those interpretations conflict with each other, and in what particular? Do they agree, and if so, is their joint meaning applicable to the intention of the statute and agreeable to the common sense of mankind?

The word "foreigner," and more particularly that used in the Hawaiian law, "*haole*," is the opposite of "*native*." According to Webster, Walker, Fuller, and Knight, and in short to all philologists, the first means, "*a person born in a foreign country, or without the country's jurisdiction of which one speaks.*" The latter is the converse of this, "*born within, &c.*" These two terms, "foreigner" and "native," divide mankind into two great classes. A man can be the native of but one country. To all others he is a foreigner, and he can never vary this distinction by any mental nor physical process. Like the color of his skin it clings to him through life. But although this results from circumstances over which he has no control, yet as men's desires or necessities impel them to wander and to leave the place of their birth, the law has, among civilized nations, provided a method of removing the disqualifications which attend foreigners, and without changing their characteristic of "persons born without the country," it gives them the privileges and imposes upon them the duties of natives or "persons born within." The law having conferred this change, designates the two classes by the legal terms, alien and citizen, both of which specify relations growing out of the generic terms, foreigner and native.

Such then being the true meaning of the word foreigner, in which sense it is used by Vattel and other writers on law, and finding it employed in the statute in question, where it is put in contradistinction to "native," it is to be inferred that the intention of the legislators was limited only by its signification. Had they wished to confine the meaning to the class for which Mr. Brown contends, they would have used the term, alien, which would have avoided every doubt in the interpretation. But having the choice of the two before them, they used that which includes not only aliens but naturalized subjects also, thus giving the widest scope possible for the formation of impartial juries. We are further confirmed in this opinion by the well admitted fact, that the design of the framers of the laws was to provide foreigners with juries, not as Mr. Brown asserts in one place, of men having an interest in the parties litigant, but rather as he states in another, because they *know*; i. e., persons understanding their language, of the same mental capacities as themselves, and conversant with the rules of the courts and manner of securing and analyzing testimony of their respective countries. Such was the generous and equitable intentions of the legislators. If it is to be narrowed to Mr. Brown's views, and one class of "foreigners" within the meaning of the statute excluded, he can with equal propriety demand to set aside any other class. In a case between foreigners of two different and perhaps hostile nations, we should see their consuls respectively wrangling with the court for an entire jury of their own countrymen, to the exclusion of the other. The court would then present the deplorable spectacle of an arena for the display of national animosities, and this government be the foot-ball of contention between the parties. If it be objected that a case might arrive in which this government had a resulting interest, then, even admitting to strengthen the argu-